

Global information governance in pandemic times

In the geopolitics of global health information, international institutional law is more important than ever

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The main argument of my book, which we are discussing in this symposium, is that international institutions are not only diplomatic fora, lawmakers or financiers, but also act and govern through information, knowledge and expertise. Their informational activities are governed by a body of law that strikes an uneasy balance between international cooperation, state sovereignty and individual rights. This balance is becoming all the more salient in times of a global pandemic, when unreliable statistics, provisional knowledge, conflicting expertise and the geopolitics of information become the basis for drastic emergency measures across the globe. In this post, I thus want to use the Covid-19 pandemic as a lens to reflect on current legal problems of global information governance and to respond to the earlier contributions by Hendrik Simon and Matthias Rossi.

Pandemics as problem of global information governance

As the time we spend looking at exponential graphs is growing exponentially, it is important to understand that pandemics like Covid-19 also represent a problem of global governance of information and expertise. Drastic restrictions of public life are based on health statistics – infection curves, death rates, mortality demographics – and weighed against their collateral damage, measured in figures of economic growth, unemployment, domestic violence, rights restrictions etc. Such statistics suggest scientific precision and certainty, but behind the numbers lurk significant problems of reliability, validity, comparability and uncertainty. Some of these difficulties are inherent in any statistical and scientific exercise (see e.g. [here](#)). Yet our knowledge about the pandemic is also afflicted by problems of global politics, power and cooperation.

These problems only begin with the political manipulation of health statistics. Among rising doubts over Chinese official figures, the US now [deploys the CIA](#) to hunt for actual virus totals. While authoritarian governments can [supress unflattering information](#) more easily, democratic regimes have not been immune from [official mis-messaging](#) and [media misinformation](#). And as scientists mount a global scramble for medical responses, international cooperation seems inhibited by competition for [vaccines](#) and [treatments](#), by political [attempts](#) to control the public [perception](#) of the outbreak, and by competing [narrative frames](#) about the role of globalization, capitalism and the state in pandemics.

Managing these challenges seems a tall order for international institutions and their law at a time when governments not only prioritize national interest, but openly struggle to control the WHO's pandemic communication. The WHO is accused to be China's "[Coronavirus accomplice](#)", and US president Trump [threatens to defund](#) the organization for contradicting his travel ban. Yet far from becoming irrelevant, the WHO is turning out to be a key battlefield in the geopolitical struggle over global information control. I would thus argue that the WHO is more important than ever – and so is its law.

The role of international institutions and their law

In my book, I developed and exemplified the legal framework for global information governance in a specific area, the law of development finance. As Matthias Rossi points out in [his review](#), it is always tricky to develop generalizable claims by using one area of reference. While development and global health differ in some respects, these differences make my core argument even more relevant: As Armin von Bogdandy and Pedro Villareal [point out](#), the WHO relies even more on governance by information, and its law addresses informational activities in even greater detail than other international institutions. I would add that while specific rules may differ, the analytical framework and general principles of the international institutional of information are just as applicable to WHO law. As Matthias Rossi has summarized the general principles in his contribution, I will focus here on their application to the WHO's current pandemic response. In this regard, the main legal problem is how to reconcile tensions between the three general principles and their underlying paradigms: informational cooperation and its functionalist emphasis on expertise; collective self-determination and the sovereigntist force of politics; and individual autonomy and the constitutionalist impetus of human rights.

Informational cooperation and the place of expertise

The principle of informational cooperation obliges member states to exchange information and empowers international institutions to autonomous informational action based on independent expertise. The WHO's constitution and secondary law, the 2005 [International Health Regulations](#) (IHR), establish a range of obligations and powers that address information problems in a global pandemic. The WHO thus fulfils unspectacular but important coordinating functions with respect to virus and vaccine research. States are not only required to notify the WHO within 24 hours of "all events that might constitute a public health emergency of international concern" (Art. 2 IHR), but the WHO is also empowered to collect its own information to verify and complement state reporting (Art. 9-10 IHR). The WHO has already used internet data [during the 2003 SARS outbreak](#), and today google search data can diagnose and predict infections even before patients, let alone governments, know about them. Based on the available information, the WHO Director General can declare a "public health emergency of international concern" (Art. 12 IHR) and make influential public recommendations for national measures, including the far-reaching lockdowns most countries have currently adopted (Art. 15, 18ff).

The rules and procedures that govern the exercise of these powers heavily emphasize the WHO's internal technical expertise. Yet, time and again the WHO

is criticized for being “politicized” and for making decisions not exclusively based on expertise (cf. [here](#), p. 4). In the current pandemic, the WHO is [accused](#) of kowtowing to China’s political influence, taking Beijing’s official statistics at face value, broadcasting its propaganda and uncritically recommending its epidemic control policy to the world while neglecting its negative externalities and less intrusive, equally effective strategies in Taiwan and elsewhere.

Collective self-determination and the place of politics

The politics of expertise is normatively addressed by the general principle of collective informational self-determination. It is derived from the principles of sovereignty and non-intervention and gives states a say in the production of international knowledge that affects them. This does not mean that national governments legally control specific information as China is trying to do. But it acknowledges the sociological insight that knowledge production always depends to some extent on institutional and political contexts, as Hendrik Simon stresses out in [his contribution](#). Politicization as such is ambivalent and may either [harm or help](#) the legitimacy of global governance, and law cannot and should not depoliticize global information governance entirely. Hence, the question is rather *what kind of politicization* is normatively adequate, and how WHO law should be interpreted and developed to productively couple expertise and politics.

This requires, firstly, adequate procedures and divisions of competences that structure the interplay between the WHO’s expert bureaucracy and its political organs. The expert bureaucracy is best placed to collect impartial and comparable health data as a global public good. Political organs must enact a legal framework that legitimates the exercise of international public authority, especially in the form of emergency declarations and recommendations. The current framework does empower the Director General to exercise this authority, but it relies too much on the internal expertise of the WHO and cares too little about transparency, public reason-giving, participation and diversity of experts (see [here](#), p. 14). A more open approach that emphasizing the pluralism and contestability of expertise would not only represent more state-of-the-art knowledge management, but also enhance political legitimacy.

The second point is a realist one: Acknowledging the role of states recognizes that global powers have always attempted to use the WHO to globalize their vision of health policy. China is no different in its attempt to become a global health superpower. The WHO is walking a tightrope here between impartially fulfilling its mandate and keeping Beijing committed to rules-based multilateralism. As China is evolving from norm-taker to norm-shaper in [the global legal order](#), the diplomatic challenge is thus to prevent Chinese unilateralism all while defending a democratic politics of expertise and human rights.

Human rights and the place of the individual

Human rights also impose legal requirements for the informational activities of states and international institutions alike (cf. Art. 3, 32 IHR). The WHO must respect privacy rights when it collects personal data, and it must guarantee [access information rights](#)

that empower individuals and decentralize informational control. More importantly, its public recommendations and communications must consider all human rights affected by the pandemic: not only the duty to protect the rights to life and health against Covid-19, but also the many rights restricted by the pandemic response, including the rights to freedom of movement, personal liberty, assembly, association, religion, education, privacy etc.

This is a complex balancing exercise, and the WHO can hardly recommend a uniform balance for all member states irrespective of context. Empirically, there is much uncertainty about the virus, and experts disagree on the relative effectiveness of specific measures like [school closures](#). Normatively, there are difficult trade-offs: Lockdown measures benefit one vulnerable group, namely the elderly and those with prior conditions, and disparately burden others – people in extreme poverty, children barred from school, women suffering from domestic violence etc. What the WHO can do in these circumstances is to provide empirical substance to proportionality assessments and make distributive effects visible with the help of disaggregated data from human rights indicators. The ideal modality for concrete balancing advice is not one-size-fits-all recommendations but country-specific technical assistance – but that would require more WHO funding and capacity.

The way forward

Going forward, the role for legal scholarship remains to critically compare and develop the law of information governance across international regimes. Does the WHO achieve a better balance between legal principles than the World Bank's Doing Business regime? Might it learn something from the International Panel on Climate Change? Besides, moments of crisis can also become windows of opportunity for structural change. Why not make the WHO the global trustee holding the patent for the coming Covid-19 vaccine? With adequate legal safeguards, this might ensure equal access for all at reasonable prices while making the WHO more financially independent and less vulnerable to authoritarian regimes, populist nationalism and regulatory capture.

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